UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

WALTER AND ANNETTE WHITBECK,	:	
Plaintiffs,	:	
v.	:	
JONES MANUFACTURING COMPANY,	:	
Defendant/Third-Party Plaintiff,	:	Case No. 3:01CV750 (AHN)
v.	:	
MICHAEL MCGUFFIE d/b/a NEW ENGLAND BARK MULCH,	:	
Third-Party Defendant.	:	

RULING ON THIRD-PARTY DEFENDANT MICHAEL MCGUFFIE d/b/a NEW ENGLAND BARK MULCH'S MOTION TO DISMISS THIRD-PARTY COMPLAINT

Plaintiff Walter Whitbeck has brought suit against Defendant Jones Manufacturing Company ("Jones") for injuries he suffered while operating a bark mulch processor manufactured by Jones. Whitbeck's employer, New England Bark Mulch ("New England"), paid his workers' compensation claim and has not been sued by him. In response, however, Jones filed a third-party complaint against New England for indemnity and contribution, alleging that New England had unsafely altered its processor and thus was a proper third-party defendant. New England now moves to dismiss Jones's

third-party complaint on the ground that the Connecticut Workers' Compensation Act precludes further recovery against an employer who has fully compensated an employee for injuries suffered while on the job, which is commonly referred to as that statute's exclusive-remedy clause. Opposing New England's motion, Jones claims that the circumstances of the instant case constitute an exception to the general rule.

The disposition of this motion to dismiss hinges on whether an employer-purchaser's alleged duty not to make improper modifications to a manufacturer's product constitutes a sufficient basis for finding the existence of an independent legal duty between the employer and the manufacturer. In the absence of such a legally cognizable duty, the exclusive-remedy clause applies and the employer cannot properly be joined as a third party in defending a products liability action.

To satisfy this requirement, Jones argues that New England, as purchaser of its product, owed it a duty not to change, alter, modify, or misuse its mulch processor in an unsafe manner. Connecticut state courts, however, have consistently held that Jones's theory is insufficient to create an independent legal relationship between the manufacturer and the employer. As a result, Jones is unable

to avoid the preclusive effect of the exclusive-remedy clause of the workers' compensation statute. Accordingly, the court shall grant New England's motion to dismiss [doc. # 19].

STANDARD

A motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) is granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. Spalding, 467 U.S. 69, 73 (1984). The function of a motion to dismiss is "merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) (quoting Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980)). The motion therefore must be decided solely on the facts alleged. See Goldman v. Belden, 754 F.2d 1059, 1065 (2d Cir. 1985).

When deciding a motion to dismiss for failing to state a claim on which relief can be granted, the court must accept the material facts alleged in the complaint as true, and all reasonable inferences are to be drawn and viewed in a light most favorable to the plaintiffs. See, e.g., Leeds v. Meltz,

85 F.3d 51, 53 (2d Cir. 1996). The court "must not dismiss the action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994) (internal quotation marks omitted). The issue is not whether the plaintiff will prevail, but whether he should have the opportunity to prove his claims. See Conley v. Gibson, 355 U.S. 41, 45 (1957).

BACKGROUND

For the purpose of New England's motion, the court shall assume the truth of the following facts taken from Jones's third-party complaint.

As a machine operator for New England in Winchester, Connecticut, Whitbeck regularly used a large machine called the "Mighty Giant Bark Mulch Processor" (the "processor"), which shredded wood bark into mulch. New England purchased this machine from the manufacturer, Defendant Jones of Beemer, Nebraska. According to Jones's third-party complaint, New England made significant improper modifications to the mulch processor, including the addition of a low platform and a metal ladder, which altered the machine's design and compromised its overall safety.

One day when operating this machine, Whitbeck slipped on the ladder installed by New England while trying to dislodge a log stuck in the processor's tub. As a result, his left foot was severely injured. New England has paid him substantial sums in workers' compensation benefits to reimburse him for his medical expenses.

Whitbeck subsequently brought the instant diversity suit against Jones under a state law products liability theory. He alleges that the mulch processor was defective and unreasonably dangerous because, among other things, it lacked an emergency stop mechanism or an adequate means to access the tub in order to clear jammed logs. Whitbeck's wife also has filed a claim based on a loss of consortium.

Jones counters that New England, among other things, negligently installed a ladder, platform, and/or hopper on the processor; negligently altered the processor in a manner not in accordance with Jones's instructions or specifications; and altered the processor in a manner that was neither intended nor could be reasonably anticipated by Jones.

DISCUSSION

As Whitbeck's employer, New England argues that it fully discharged its responsibilities to him under the state Workers' Compensation Act, which generally serves as an

employee's sole avenue of redress against an employer for an on-the-job injury. New England therefore maintains that it is immune from suit from Jones for indemnification or contribution. Jones counters that the Connecticut Supreme Court's ruling in Ferryman v. Groton, 212 Conn. 138, 146, 561 A.2d 432 (1989), provides an exception to this general rule because its third-party complaint alleges that New England breached a duty to Jones, as the manufacturer, not to make improper modifications to the mulch processor. Jones further contends that dismissing New England from this litigation would unfairly expose Jones to liability for risks created by another party.

A. The Connecticut Workers' Compensation Act and the *Ferryman* Rule

Under Conn. Gen. Stat. § 31-284, commonly referred to as the "exclusive-remedy clause" of the Workers' Compensation Act, employers are generally immune from liability for personal injuries sustained in the course of employment. Sullivan v. State, 189 Conn. 550, 558, 457 A.2d 304 (1983). The statute states in pertinent part: "An employer who complies with the [Workers' Compensation Act] shall not be liable for any action for damages on account of personal injury sustained by an employee arising out of and in the course of his employment or on account of death resulting from

personal injury so sustained." Conn. Gen. Stat. § 31-284 (emphasis added). Moreover, "[a]ll rights and claims between an employer who complies with the requirements of the [Workers' Compensation Act] and employees . . . arising out of personal injury or death sustained in the course of employment are abolished other than rights and claims given by this chapter." Id. (emphasis added).

The Connecticut Supreme Court, however, has carved out a limited exception to the exclusive-remedy clause. The general rule is that if a manufacturer seeks recovery against a contributorily negligent employer in the course of defending a products liability action, contribution and indemnification are ordinarily denied because the employer cannot properly be considered jointly liable in tort to the injured worker. Ferryman, 212 Conn. at 144-45 (1989); see also Kaplan v. Merberg Wrecking Corp., 152 Conn. 405, 412, 207 A.2d 732 (1965).

Under certain limited circumstances, Ferryman allows a third-party tortfeasor to seek indemnification, as opposed to contribution, from the intervening employer when an independent relationship exists between the third-party tortfeasor and the employer. This exception has two requirements: (1) a relationship independent of the employer-

worker relationship must exist between the employer and third-party tortfeasor; and (2) the employer must owe an independent legal duty to that third party. Id. at 144-45.

In Ferryman v. Groton, an employee of Electric Boat died after being electrocuted by a high voltage line on property owned by the City of Groton. The City of Groton attempted to implead Electric Boat, the employer, because the latter was a co-owner of the electric station. Id. at 140. Electric Boat moved to strike the City of Groton's third-party complaint.

In evaluating the motion, the Connecticut Supreme Court determined that the City of Groton had adequately alleged an independent legal duty to overcome the exclusive-remedy clause. More specifically, the court held that "the complaint discloses the essentials of either a co-owner relationship, a bailor-bailee relationship or a lessor-lessee relationship, any one of which could contain the express or implied independent, legal duty that would serve to preclude the operation of the exclusive remedy provisions of § 31-284." Id. at 146.

B. Analysis of New England's Motion to Dismiss Under Connecticut Case Law

Jones has not provided the court with any authority supporting its theory that a duty not to alter a manufacturer's product creates a cognizable independent legal

relationship between an employer and a manufacturer. More specifically, Jones has not identified a single Connecticut case that addresses this issue in the specific context of when a manufacturer tries to implead an employer-purchaser in a products liability case.

On the other hand, several Connecticut superior courts have held that a purported duty to not alter or misuse a manufacturer's product does not create an independent legal relationship under Ferryman which can trump the exclusive remedy-clause of the workers' compensation statute. For example, in Roundtree v. AM Manufacturing Co., Inc., Docket No. CV 92 338311, 1995 WL 591470, at *1 (Conn. Super. Sept. 27, 1995), the plaintiff was an employee in a bagel bakery who sued the manufacturer of a dough machine under a products liability theory. Upon filing a third-party complaint against the plaintiff's employer, the manufacturer asserted that an independent duty had been created between it and the employer because the employer (1) had modified the machine in a manner that made it dangerous; and (2) had failed to train its employees to use the machine. In granting the employer's motion to strike the third-party complaint, the court rejected the manufacturer's argument, holding that it would "swallow the protections afforded employers under the exclusive

liability clause of the Worker's Compensation Act." Id. at *2. In so ruling, the Roundtree court explicitly recognized that other Connecticut superior courts "ha[d] rejected indemnification actions similar to the one now before the court brought by manufacturers against employers who claimed the employer's negligent use or lack of training in use of equipment helped cause the injury." Id.

Similarly, in Schweighoffer v. Pesavento, Docket No. CV 94 315844, 1996 WL 62718, at *1 (Conn. Super. Feb. 2, 1996), the plaintiff brought a products liability claim against the manufacturer of a liquid drain opener. Claiming that the employer's purchase of the product and its past business dealings with the manufacturer gave rise to an independent legal relationship under Ferryman, the manufacturer sued the plaintiff's employer, which already had compensated the plaintiff for his injuries. In finding that no independent, legal duty existed, the court ruled: "The law does not independently impose a quasi-contractual duty upon a buyer to indemnify a manufacturer for injuries sustained by the buyer's employees in the use of a defective product." Id. (citing

Therrien v. Safeguard Manufacturing Co., 180 Conn. 91, 95, 429 A.2d 808 (1980)).[1]

Furthermore, in Fernandez v. Fusco Corp., Docket No. CV 98 61475, 1999 WL 722615, at *4 (Conn. Super. Sept. 3, 1999), a plaintiff sued the manufacturer of an allegedly defective door that injured her at work. The manufacturer attempted to implead the employer, which allegedly had failed to perform necessary maintenance on the door. As did the Roundtree and Schweighoffer courts, the Fernandez court rejected the manufacturer's argument and found that "a duty to indemnify does not exist simply because a party buys a certain product from a manufacturer." Id. at *4; see also Hajjar v. Frederick L. Bultman, Inc., Docket No. 316244, 1995 WL 70306, at *3 (Conn. Super. Feb. 9, 1995) (vendor/vendee relationship is insufficient to support indemnity claim between employer and employee). Thus, absent an implicit or explicit agreement to indemnify, "a manufacturer cannot seek indemnification from the employer." Fernandez, 1999 WL 722615, at *4; see also Korch v. Brooklyn General Repair, Docket No. 59896, 2001 WL

[1] The Therrien case considered whether a buyer of goods had an implied duty to protect a manufacturer-seller from liability for injuries sustained by one of the buyer's employees. 180 Conn. at 93, 429 A.2d at 809. However, it did not include a discussion of the exclusive-remedy clause of the workers' compensation statute.

543228, at *6 (Conn. Super. April 30, 2001) (citing Roundtree, Schweighoffer, and Fernandez, and holding that "there are insufficient factual allegations in the counterclaim to overcome the exclusive remedy provision of the Workers' Compensation Act"). In sum, a substantial body of Connecticut case law in the products liability context rejects Jones's contention that an employer's duty not to alter or misuse a manufacturer's product can overcome the exclusive-remedy clause of the Connecticut Workers' Compensation Act.

Despite Jones's efforts to characterize its seller-buyer relationship with New England as creating an independent legal duty, the instant case is factually and analytically similar to the cases discussed above in all key respects. New England purchased Jones's product, and Whitbeck, as New England's employee, used it to process mulch. Jones has made no allegation in its third-party complaint that it shared with New England a co-owner, bailor-bailee, lessor-lessee, or any other type of relationship that would give rise to a legal duty under Ferryman. Moreover, Jones has not alleged that New England agreed not to modify the processor as an express condition of purchase. In short, Jones's third-party complaint does not give the court any principled basis for concluding that an independent, legal duty pursuant to

Ferryman ever existed between Jones and New England. Thus, as a matter of law, Jones's third-party complaint does not state a claim for which relief may be granted.

Finally, with respect to Jones's view that dismissal of New England would unfairly expose Jones to liability for another party's alleged negligence, the court notes that Jones has a complete statutory defense if it can prove its allegation that New England improperly altered the mulch processor, and that this alteration caused Whitbeck's injuries. Under Conn. Gen. Stat. § 52-572p, "[a] product seller shall not be liable for harm that would not have occurred but for the fact that his product was altered or modified by a third party unless: (1) the alteration or modification was in accordance with the instructions or specifications of the product seller; (2) the alteration or modification was made with the consent of the product seller; or (3) the alteration or modification was the result of conduct that reasonably should have been anticipated by the product seller." Conn. Gen. Stat. § 52-572p. This statute effectively immunizes a manufacturer from all liability when a third party, such as an employer, makes an improper modification to a machine. See Potter v. Chicago Pneumatic Tool Company, 241 Conn. 199, 229-230, 694 A.2d 1319 (1997).

Therefore, although Jones would prefer to defend this litigation with the benefit of New England's presence, Connecticut law provides it with a complete defense should a jury determine that New England did, in fact, improperly alter the mulch processor.

CONCLUSION

For the foregoing reasons, New England's motion to dismiss Jones's third-party complaint [Doc. # 19] is GRANTED.

SO ORDERED this ____ day of January, 2003, at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge